

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HELLMANN WORLDWIDE LOGISTICS,
INC.,

Plaintiff,

v.

BRUCE HARRIS, PHILIP MCINERNY,
HALLIE ENGEL, AND PACNOR
TRANSPORTATION, LLC,

Defendants.

C09-738Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court GRANTS IN PART and DEFERS IN PART Defendant Bruce Harris' Motion to Dismiss Plaintiff's RICO and State Law Claims¹, docket no 12, as follows:

(a) The Court GRANTS the motion in part and DISMISSES without prejudice Plaintiff's RICO (Count One) and state law fraud (Count Four) claims for failure to plead these claims with the requisite particularity. The Court grants Plaintiff leave to amend the Complaint within thirty (30) days of the entry of this Order. In claims of fraud, the plaintiff must "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). This particularity requirement applies to RICO claims predicated on fraud. See Moore v. Kayport Package Express, Inc., 885 F.2d 531, 541 (9th

¹ Defendant Bruce Harris moved to dismiss, docket no. 12. Defendants Hallie Engel and Pacnor Transportation, LLC filed a Notice of Joinder, docket no. 13. The Court *sua sponte* JOINS Defendant Philip McInerny in the present motion. This Order applies to all Plaintiff's claims against all Defendants.

1 Cir. 1989). In addition to stating the time, place, and content of an alleged
2 misrepresentation, the plaintiff must “set forth what is false or misleading
3 about a statement and why it is false.” In re GlenFed, Inc. Securities
4 Litigation, 42 F.3d 1541, 1547-48 (9th Cir. 1994). Plaintiff’s Complaint does
5 not allege the RICO predicate acts of mail and wire fraud or the state law fraud
6 claim with sufficient particularity to meet the requirements of Rule 9(b). The
7 Complaint describes only a general time frame and does not provide any
8 specific dates on which any of the activity occurred. It also lacks sufficient
9 identifying details about the allegedly fraudulent invoices and emails.
10 Moreover, the information about these transactions is not peculiarly within the
11 knowledge of Defendants, and Plaintiff cannot, therefore, base the allegations
12 of fraud “upon information and belief.” See Moore 885 F.2d at 540. When
13 ruling on a motion to dismiss, the Court “may generally consider only
14 allegations contained in the pleadings, exhibits attached to the complaint, and
15 matters properly subject to judicial notice.” Manzarek v. St. Paul Fire &
16 Marine Ins. Co., 519 F.3d 1025, 1030-31 (9th Cir. 2008). Accordingly, the
17 Court has not considered Exhibits 1-3 attached to Plaintiff’s Opposition to the
18 Motion to Dismiss.

19 (b) The Court DEFERS a ruling on whether to exercise supplemental
20 jurisdiction over Plaintiff’s remaining state law claims (Counts Two and
21 Three).

22 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
23 record.

24 Filed and entered this 10th day of September, 2009.

25 BRUCE RIFKIN, Clerk

26 By s/ Claudia Hawney
Claudia Hawney
Deputy Clerk